

December 3, 2014

Andreas Borgeas, Chairman
Heather Elkins, Chief of Staff
Fresno County Board of Supervisors, District 2
Room 300, Hall of Records
2281 Tulare Street
Fresno, California 93721-2198

Re: Your Request for Advice
Our File No. A-14-201

Dear Mr. Borgeas:

This letter responds to your request for advice¹ regarding the gift provisions of the Political Reform Act (the “Act”).² Please note that the Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and our advice is based solely on the provisions of the Act.

QUESTION

Are payments for travel, lodging and subsistence made to you relating to your trip to the Nagomo Karabakh Republic to serve as a political observer for their 2015 Parliamentary elections subject to reporting and gift limits?

CONCLUSION

Payments for your travel, lodging and subsistence are generally reportable gifts, but not subject to gift limits because they are in connection with a legislative or governmental purpose and/or concern international public policy, and are provided by a foreign government. Any other payments will be reportable gifts subject to gift limits.

¹ We received a virtually identical request for written advice dated November 20, 2014, from Heather Elkins on your behalf.

² The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

You are the Chairman on the Fresno County Board of Supervisors and have received an official invitation from the Nagorno Karabakh Republic to serve as a political observer for their 2015 Parliamentary elections. It is your understanding that the Nagorno Karabakh Republic will be paying for your airfare, lodging and meals for approximately three to five days in and around election sites in the capital city of Stepanakert. The activities will likely involve observing, reviewing and reporting on the Parliamentary elections process.

You believe the invitation likely stems from a resolution passed in 2013 wherein Fresno County became the first county in California to recognize the importance of democratic elections and the independence of the Nagorno Karabakh Republic. The California Legislature passed a similar resolution in 2014.

ANALYSIS

Gifts, Generally

A gift is defined under Section 82028(a) as “any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.”

In an effort to reduce improper influences on public officials, the Act regulates the receipt of gifts by local public officials in three ways:

First, the Act places limitations on the acceptance of gifts by certain public officials. The limit applicable in 2015 is \$460 from a single source in a calendar year.³ (Section 89503; Regulation 18940.2.) This gift limit applies to you as the Chairman on the Fresno County Board of Supervisors.

Second, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on designated employees requiring that any gift (or any gifts that aggregate to \$50 or more from the same source) received during the calendar year are disclosed on the officials’ statements of economic interests. (Sections 82030 & 87302.)

Third, the Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$460 or more provided to, received by, or

³ Because your travel will be in 2015, we apply the gift limit of \$460, which will be effective on January 1, 2015.

promised to the official within the 12 months prior to the date the decision is made. (Sections 87100 & 87103(e); Regulations 18700 & 18703.4.)

Gifts of Travel

Under the Act and unless stated otherwise in Commission regulations not applicable here, any free travel is presumed to confer some personal benefit on a public official and is generally considered a gift unless the official provides equal or greater consideration in exchange for the travel.⁴ In addition, travel costs paid for by a third party generally are reportable gifts under the Act. Therefore, absent an exception, the value of all travel-related expenses to the Nagomo Karabakh Republic paid by a third party will be considered a reportable gift to you. (Section 82028; *Gault* Advice Letter, No. A-07-158.)

Gift of Travel - Exceptions

Under some circumstances, even though a payment for transportation, lodging, and subsistence may be a reportable gift under the Act, the gift is not subject to the Act's 2015 \$460 gift limit. In this regard, Section 89506(a) provides an exception from the gift limits for certain travel payments:

(a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence that are reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following apply:

(1) The travel is in connection with a speech given by the elected state officer, local elected officeholder, candidate for elected state office or local elected office, an individual specified in Section 87200, member of a state board or commission, or designated employee of a state or local government agency, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.

(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit charitable or religious organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled

⁴ If you provide consideration of equal or greater value in exchange for the benefits you receive in exchange for being an election observer, the payment is considered "income" and not a gift.

outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

To summarize, gifts of travel are generally reportable and subject to limits unless the travel falls under an exception. Relevant to the present situation is Section 89506(a)(2), which provides that travel expenses reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international policy, are *not prohibited or limited* if they are provided by certain specified sources such as governmental agencies, bona fide public or private educational institutions, or non-profit 501(c)(3) organizations.

1. *Are the travel expenses reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy?*

According to the facts, you will travel to the Nagomo Karabakh Republic for three to five days to serve as a political observer for their 2015 Parliamentary elections. While there, you will be visiting election sites in the capital city of Stepanakert where your duties will likely involve observing, reviewing and reporting on the Parliamentary elections process. It appears plain, therefore, that the trip to the Nagomo Karabakh Republic is directly related to a legislative or governmental purpose and/or concerns international public policy.

2. *Are the travel expenses being provided by an entity described in Section 89506(a)(2)?*

It is your understanding that the Nagomo Karabakh Republic will be paying for the airfare, lodging and meals associated with your trip. Therefore, the source of funding for your travel, a foreign government, falls within the purview of Section 89506(a)(2).

Accordingly, payments provided by Nagomo Karabakh Republic for your lodging, transportation and food related to your trip to the Nagomo Karabakh Republic are reportable gifts that are not subject to gift limits pursuant to Section 89506(a)(2). Please note, however, that any payments made by third parties for items other than travel and related lodging and subsistence may be considered a reportable gift subject to the gift limit and the conflict of interest provisions of the Act, because those items would not be related to a legislative or governmental purpose or issues of international public policy.

The “Informational Material” Exception

Regardless of the source, not all goods and services supplied to program participants are necessarily “gifts.” The Act excludes from its definition of “gift” items classed as “informational material,” a term that includes “any item which serves primarily to convey information and which is provided for the purpose of assisting the recipient in the performance of his or her official duties or of the elective office he or she seeks.” (Section 82028(b)(1); Regulation 18942.1.) “Informational material” may include “[b]ooks, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to informational conferences

or seminars.” (Regulation 18942.1(a).) This does not, of course, include payments for travel, which would include costs of transportation, lodging or subsistence. (Section 82028(b)(1).) You have provided no facts relevant to this gift exception so we do not address it further.

Conflict of Interest Disqualification

As mentioned, a public official who receives gift(s) of \$460 or more may have a financial conflict of interest under the Act. (Sections 87100, et seq.) The official must disqualify himself or herself from voting or otherwise participating in a governmental decision affecting that source, if the payment was received or promised to the official within 12 months preceding the decision. Therefore, if you accept gifts from the source identified above valued at \$460 or more, you may be prohibited from participating in governmental decisions affecting that source. If this occurs, you should seek further assistance.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Jack Woodside
Senior Counsel, Legal Division

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